



U.S. Department of Justice

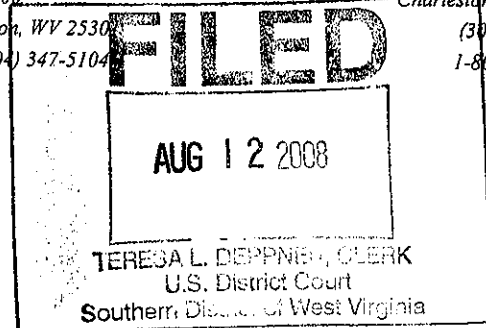
United States Attorney
Southern District of West Virginia

United States Courthouse
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July 17, 2008

David R. Bungard, Esquire
Federal Public Defender's Office
300 Virginia Street, East
Room 3400
Charleston, West Virginia 25301



Re: United States v. Charles Edward Wiseman, Jr.
Criminal No. 5:08-00042

Dear Mr. Bungard:

This will confirm our conversations with regard to your client, Charles Edward Wiseman, Jr. (hereinafter "Mr. Wiseman"). As a result of these conversations, it is agreed by and between the United States and Mr. Wiseman as follows:

1. **PENDING CHARGES.** Mr. Wiseman is charged in a two-count indictment as follows:

- (a) Count One charges Mr. Wiseman with a violation of 18 U.S.C. § 2251(a) (production of child pornography); and
- (b) Count Two charges Mr. Wiseman with a violation of 18 U.S.C. § 2252(a)(4)(B) (possession of child pornography).

2. **RESOLUTION OF CHARGES.** Mr. Wiseman will plead guilty to Count Two of said indictment, which charges him with a violation of 18 U.S.C. § 2252(a)(4)(B). Following final disposition, the United States will move the Court to dismiss Count One in Criminal No. 5:08-00042 as to Mr. Wiseman.

3. **MAXIMUM POTENTIAL PENALTY.** Mr. Wiseman agrees that he has a prior conviction relating to the misdemeanor possession of child pornography as more fully set forth in 18 U.S.C. §

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2252(b)(2). As a result, the maximum penalty to which Mr. Wiseman will be exposed by virtue of this guilty plea is as follows:

- (a) Imprisonment for a period of a mandatory minimum of 10 years and up to 20 years imprisonment;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of not less than five years and up to life;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 2259, 3663A, and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Mr. Wiseman has submitted certified financial statements to the United States reflecting that he is without sufficient funds to pay the special assessment due upon conviction in this case. Mr. Wiseman agrees that, if incarcerated, he will join the Inmate Financial Responsibility Program, earnings from which will be applied toward payment of the special assessment.

5. **RESTITUTION.** Notwithstanding the offense of conviction, Mr. Wiseman agrees that he owes restitution for the full amount of the losses for victims D.C. and B.T. to be determined by the Court pursuant to 18 U.S.C. § 2259(b)(3). Mr. Wiseman agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Mr. Wiseman further agrees as follows:

- (a) Mr. Wiseman agrees to fully assist the United States in identifying and locating any assets to be


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applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.

- (b) Mr. Wiseman will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.
- (c) Mr. Wiseman agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest.
- (d) Mr. Wiseman agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives his right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.
- (e) Mr. Wiseman agrees not to appeal any order of the District Court imposing restitution.

6. **PAYMENT OF MONETARY PENALTIES.** Mr. Wiseman agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full


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immediately, Mr. Wiseman further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

7. **COOPERATION.** Mr. Wiseman will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Wiseman may have counsel present except when appearing before a grand jury.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Wiseman, nothing contained in any statement or testimony provided by Mr. Wiseman pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Wiseman for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Wiseman for perjury or false statement if such a situation should occur pursuant to this agreement.

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Wiseman agree that the facts comprising the offenses of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit A." This stipulation of facts does not include all relevant conduct.


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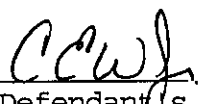
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Mr. Wiseman agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Wiseman, and he is subsequently tried on any of the charges in the indictment and/or information, the United States may use and introduce the "Stipulation of Facts" in the United States case-in-chief, in cross-examination of Mr. Wiseman or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Wiseman or on his behalf. Mr. Wiseman knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Wiseman understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

11. **RULE 11(c)(1)(C) POTENTIAL PENALTY.** Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States and Mr. Wiseman stipulate and agree that a sentence of fifteen years imprisonment, a lifetime term of supervised release, an order of restitution and no fine constitute the appropriate disposition of this case. Mr. Wiseman understands that this agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C) is not binding on the Court unless and until the Court accepts this plea agreement. If the Court refuses to accept this plea agreement, Mr. Wiseman has the right to void this agreement and may withdraw his guilty plea.

12. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Wiseman is aware that 18 U.S.C. § 3742 affords him the right to appeal the sentence imposed by the District Court. Nonetheless, Mr. Wiseman knowingly and voluntarily waives his right to seek appellate review


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of any sentence of imprisonment imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment is at or below fifteen years, as set forth in paragraph 11 above. The United States retains the right to appeal any sentence of imprisonment on any ground whatsoever if the sentence is below fifteen years.

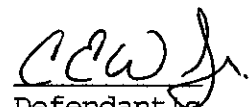
Mr. Wiseman also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. WAIVER OF FOIA AND PRIVACY RIGHT. Mr. Wiseman knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. WAIVER OF DNA TESTING. Mr. Wiseman knowingly and voluntarily waives his right under 18 U.S.C. § 3600 to request DNA testing of any evidence in this case, including the right to request such testing after conviction. Mr. Wiseman specifically agrees that:

- (a) this waiver applies to DNA testing on all items of evidence in this case that could be subjected to DNA testing;


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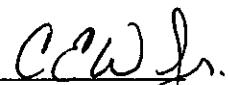
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- (b) he waives the right to request DNA testing in the current proceedings, in any proceeding following conviction under 18 U.S.C. § 3600, and in any other type of proceeding in which DNA testing may be requested, including motions for collateral relief pursuant to 28 U.S.C. § 2255 or 28 U.S.C. § 2241;
- (c) as a result of this waiver, he will never have another opportunity to have the evidence in this case submitted for DNA testing or to employ the results of DNA testing to support a claim that he is innocent of the offenses to which he has agreed to plead guilty; and
- (d) he has fully discussed the significance of DNA testing with his attorney, and that he is fully satisfied with his attorney's explanation and advice concerning DNA testing and the consequences of waiving the right to request DNA testing.

15. **SEX OFFENDER REGISTRATION REQUIREMENT.** Mr. Wiseman understands and acknowledges that under the federal Sex Offender Registration and Notification Act, he must register and keep the registration current in each of the following jurisdictions: where he resides, where he is an employee and where he is a student. Mr. Wiseman further understands that the requirement to keep the registration current includes informing at least one of the aforementioned jurisdictions not later than three days after any change of name, residence, employment or student status. Mr. Wiseman understands that failure to comply with these obligations subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

16. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence aside from


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that set forth in Paragraph 11 herein. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Wiseman;
- (f) Advise the Court concerning the nature and extent of Mr. Wiseman's cooperation; and
- (g) Address the Court regarding the issue of Mr. Wiseman's acceptance of responsibility.

17. **VOIDING OF AGREEMENT.** If either the United States or Mr. Wiseman violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

18. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Wiseman in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Wiseman in any Court other than the United States District Court for the Southern District of West Virginia.


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Acknowledged and agreed to on behalf of the United States:


CHARLES T. MILLER
United States Attorney

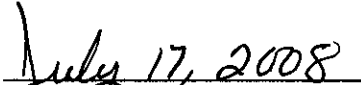
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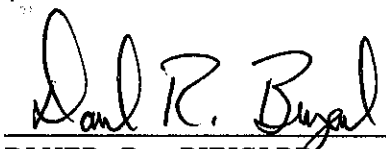
KAREN L. BLEATTLE
Assistant United States Attorney

KLB/smw


I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this nine-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


CHARLES EDWARD WISEMAN, JR.
Defendant


Date Signed


DAVID R. BUNGARD
Counsel for Defendant


Date Signed


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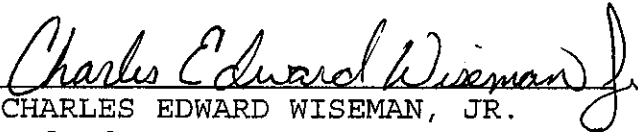
**STIPULATION OF FACTS
PLEA AGREEMENT EXHIBIT A**

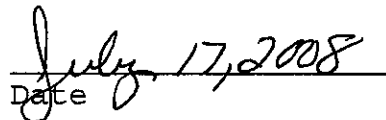
The United States and Mr. Wiseman stipulate and agree that the facts comprising the offense of conviction (Count Two in the Indictment in the Southern District of West Virginia, Criminal No. 5:08-00042) and the relevant conduct for that offense, include the following:

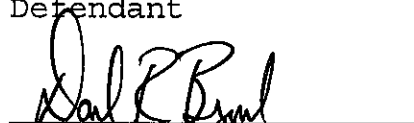
On April 30, 2007, at or near Nettie, Nicholas County, West Virginia, Mr. Wiseman possessed 15 Polaroid pictures depicting two different minors under the age of twelve whose identities are known to the parties. The majority of the pictures depict the minors engaging in sexually explicit conduct, that is, the lascivious exhibition of the genitals and pubic area of the minors. These Polaroid pictures were produced by Mr. Wiseman using real children and Polaroid film that had been mailed, shipped and transported in interstate and foreign commerce.

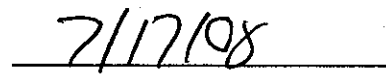
In or about June 2003, Mr. Wiseman was convicted in Rockbridge County, Virginia of the misdemeanor possession of child pornography.

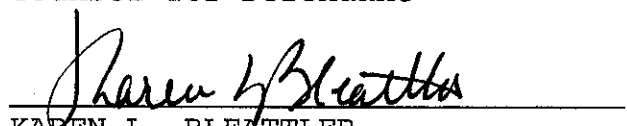
Stipulated and agreed to:



CHARLES EDWARD WISEMAN, JR.
Defendant


Date


DAVID R. BONGARD
Counsel for Defendant


Date


KAREN L. BLEATTLER
Assistant United States Attorney


Date